

## 65 - INDEPENDENT AGENCIES - REGULATORY

### 407 - PUBLIC UTILITIES COMMISSION

#### CHAPTER 285 MAINE TELECOMMUNICATIONS EDUCATION ACCESS FUND

**SUMMARY:** This Chapter implements the provisions of 35-A M.R.S.A. § 7104-B and describes the process for telecommunications carriers to contribute to the Maine Telecommunications Education Access Fund, the services eligible for discounts from the Fund, and the application process for discounts.

#### TABLE OF CONTENTS

<b>§ 1</b>	<b>DEFINITIONS</b>	<b>3</b>
<b>§ 2</b>	<b>ASSESSMENT</b>	<b>4</b>
A.	<u>Reporting and Contribution</u>	4
B.	<u>Establishment of Percentage</u>	4
C.	<u>Assessment of IXC Revenues Derived from Jurisdictionally Mixed Retail Charges</u>	5
1.	<u>Application</u>	5
2.	<u>Default Allocation Methods for IXCs</u>	5
3.	<u>Alternative Allocation Method</u>	5
D.	<u>Assessment of LEC and IXC Revenue Derived from Charges That Include Interexchange and Local and/or Ancillary Service Rates</u>	5
1.	<u>Assignment of Local and Ancillary Service Portion as Intrastate</u>	5
2.	<u>Default Determination of Local and Ancillary Service Portion</u>	5
3.	<u>Alternative Determination of Local and Ancillary Service Portion</u>	6
E.	<u>Assessment of Revenues from Jurisdictionally Mixed Charges Of Mobile Telecommunications Carriers</u>	6
1.	<u>Application</u>	6
2.	<u>Default Allocation Method for Mobile Telecommunications Carriers</u>	6

3. <u>Alternative Allocation Method</u> .....	6
F. <u>Administrator</u> .....	6
<b>§ 3 RECOVERY OF CONTRIBUTIONS FROM RETAIL CUSTOMERS</b> .....	6
A. <u>Collection From Retail Customers; Surcharge</u> .....	6
B. <u>Application to Intrastate Portion Only of Jurisdictionally Mixed Charges</u> .....	7
C. <u>Identification of Surcharge on Bill</u> .....	7
<b>§ 4 USE OF FUNDS</b> .....	7
A. <u>Eligible Services</u> .....	7
B. <u>Minimum Services Available</u> .....	7
C. <u>Innovative and Technologically Advanced Projects</u> .....	7
<b>§ 5 ELIGIBILITY FOR STATE DISCOUNT</b> .....	7
A. <u>Eligibility Criteria</u> .....	7
B. <u>Use of Federal E-Rate</u> .....	7
C. <u>Application Process</u> .....	8
<b>§ 6 ADVISORY BORAD</b> .....	8
A. <u>Membership</u> .....	8
B. <u>Duties</u> .....	8
C. <u>Procedures</u> .....	9
1. <u>Meetings</u> .....	9
2. <u>Voting</u> .....	9
<b>§ 7 WAIVER OR EXEMPTION</b> .....	9

## § 1 DEFINITIONS

A. Contributing Telecommunications Carrier. “Contributing Telecommunications Carrier” means any telecommunications carrier offering telecommunications services in Maine that had intrastate retail revenues of \$12,500 or more during the most recently completed quarter year, including all interexchange carriers (IXCs), local exchange carriers (LECs), mobile telecommunications carriers and paging providers and any other entities providing two-way interactive communication services comparable to those offered by telecommunications carriers, as determined by the Commission pursuant to 35-A M.R.S.A § 7104-B(8).

B. Intrastate Retail Revenue. “Intrastate retail revenue” is revenue that a carrier bills for intrastate telecommunications services sold to end-user customers for use by those customers, less the carrier’s factor for uncollectibles. Intrastate retail revenue does not include revenue received from sales of services to other carriers for resale by those carriers; revenue from access services sold to other carriers; interconnection revenue received from other carriers, including from the sale of unbundled network elements; and revenue derived from surcharges for the MUSF, MTEAF, 911 and similar funding requirements.

C. Mobile Telecommunications Carrier. “Mobile telecommunications carrier” means a carrier that provides mobile telecommunications services, as defined in 35-A M.R.S.A. § 102(9-A).

D. Qualified Library. “Qualified library” means a public library as defined in 27 M.R.S.A. § 110(10); research center as defined in 27 M.R.S.A. § 110(12); or a library that provides free public access to all advanced telecommunications services available at that library and whose collection serves as a statewide resource, if the Commission determines, in consultation with the Maine Library Commission, that including that library as a qualified library is in the public interest.

E. Qualified School. “Qualified school” means a public school as defined in 20-A M.R.S.A. § 1(24), including alternative programs as provided for in 20-A M.R.S.A. § 4729; a private school approved under 20-A M.R.S.A. § 2901 or § 2951; or a school that provides free public access to all advanced telecommunications services available at that school, if the Commission determines, in consultation with the Department of Education, that including that school as a qualified school is in the public interest.

F. Radio Paging Service Provider. “Radio paging service provider” means a carrier that provides a radio paging service, as defined in 35-A M.R.S.A. § 102(15).

G. Telecommunications. “Telecommunications” means the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.

H. Telecommunications Carrier. “Telecommunications carrier” means any provider of telecommunications services, except that it does not include aggregators of telecommunications services which, in the ordinary course of their operations, make telephones available to the public or to transient users of their premises using a provider of operator services.

I. Telecommunications Education Access Fund. “Telecommunications Education Access Fund” is a fund established with contributions from contributing telecommunications carriers that will be used to provide discounts to qualified schools and libraries to assist in paying the costs of acquiring and using advanced telecommunications technologies.

J. Telecommunications Service. “Telecommunications service” means the offering of telecommunications for a fee directly to the public, or to such class of users as to be effectively available directly to the public, regardless of the facilities used.

## § 2 ASSESSMENT

A. Reporting and Contribution. Each telecommunications carrier that had intrastate retail revenues for telecommunications services of \$12,500 or more during the most recently completed quarter year shall report the amount of its billed revenue and its uncollectible factor quarterly on forms provided by the Fund Administrator. Each such carrier shall contribute to the Telecommunications Education Access Fund the percentage of its intrastate retail revenues that is established pursuant to subsection B. Assessments apply to all intrastate retail revenues derived from intrastate telecommunications services provided in Maine and to intrastate retail revenues derived from rates and charges described in Section 2(C) and 2(D), or 2(E), as applicable.

B. Establishment of Percentage. By May 1 of each year, the Commission shall establish an amount of up to 0.5% of the intrastate retail revenues to be paid by contributing telecommunications carriers from July 1 to June 30 of the next proceeding year. In establishing the amount, the Commission shall consider the needs of schools and libraries, particularly as recommended by the Maine School and Library Education Access Fund Advisory Board; the amount collected in the previous year; and the impact on ratepayers, particularly when the amount for the Fund is integrated with any State Universal Service Fund developed by the Commission. The Fund Administrator, with the approval of the Commission, may add an amount for amounts billed to contributors that may be uncollected pursuant to the provisions of Chapter 288, section 4(B), provided that the maximum amount that may be collected from contributors does not exceed 0.5 percent of their intrastate retail revenues. In the first year following the implementation of the Maine

Universal Service Fund, the uncollectible percentage for this Fund shall be no greater than one percent.

C. Assessment of IXC Revenues Derived from Jurisdictionally Mixed Retail Charges.

1. Application. Assessments shall apply to the intrastate portion of those charges or rates of an IXC that apply on an unseparated basis to both intrastate and interstate service provided in Maine (e.g., minimum monthly bills, with or without a usage allowance and bills that combine interexchange and local services). Unless the Commission or the Director of Finance approves an alternative allocation method for a carrier pursuant to paragraph 3 below, a carrier shall use the default allocation method contained in paragraph 2.

2. Default Allocation Method for IXCs. For each carrier that provides interexchange service, the intrastate portion of revenue derived from retail charges or rates that apply on an unseparated basis to both intrastate and interstate interexchange service shall be determined by applying the ratio of Maine intrastate directly assigned retail revenue (e.g., usage charged at a per-minute rate) to total (intrastate plus interstate) directly assigned retail revenue for service rendered in Maine. The carrier shall report its intrastate and total Maine revenues and the percentage of intrastate revenue on a form provided by the Administrator.

3. Alternative Allocation Method. Upon application by a reporting carrier, the Commission or the Director of Finance may approve an alternative allocation method for IXCs for revenues derived from retail charges or rates that apply on an unseparated basis to both intrastate and interstate service using minutes of use or some other reasonable and verifiable apportionment method.

D. Assessment of LEC and IXC Revenue Derived from Charges That Include Interexchange and Local and/or Ancillary Service Rates.

1. Assignment of Local and Ancillary Service Portion as Intrastate. For each local exchange and interexchange carrier that offers a rate that includes both interexchange and local exchange services (including ancillary local exchange services such as call waiting, call forwarding, caller ID and the like), the portion of the rate that applies to local exchange (including ancillary) services shall be deducted prior to making the allocation described in subsection C(2) or C(3) above and shall be reported entirely as intrastate revenue.

2. Default Determination of Local and Ancillary Service Portion. The local (including ancillary) portion of any rate that includes both interexchange and local exchange (including ancillary) services shall equal the carrier's separate rates for local exchange and ancillary services. If the carrier has no separate rates for local exchange service or ancillary services, it shall use Verizon's local exchange and ancillary service rates, but must obtain approval of the Director of Finance for the method of determining the applicable Verizon rates. The carrier shall report its local exchange and ancillary service

revenue as determined pursuant to this subparagraph on a form provided by the Administrator.

3. Alternative Determination of Local and Ancillary Service Portion.

Upon application by a reporting carrier, the Commission or the Director of Finance may approve an alternative method for the determination of the local and ancillary service portion of any rate that includes both interexchange and local exchange (including ancillary) services.

E. Assessment of Revenues from Jurisdictionally Mixed Charges of Mobile telecommunications Carriers.

1. Application. Assessments shall apply to the intrastate portion of those retail charges or rates of a mobile telecommunications provider, including a paging provider, that apply on an unseparated basis to both intrastate and interstate service provided in Maine (e.g., minimum monthly bills, with or without a usage allowance and bills that combine interexchange with local and ancillary services). Unless the Commission or the Director of Finance approves an alternative allocation method for a carrier pursuant to paragraph 3 below, a carrier that provides interexchange service shall use the default allocation method contained in paragraph 2.

2. Default Allocation Method for Mobile Telecommunications Carriers.

The default allocation method for Mobile telecommunications providers, including paging providers, is the “safe harbor” methodology established by the Federal Communications Commission for commercial mobile radio service (CMRS) providers. To determine the intrastate percentage, the “safe harbor” interstate percentage shall be deducted from 100 percent. All retail revenue derived from retail charges or rates that apply on an unseparated basis to both intrastate and interstate service shall be multiplied by the intrastate percentage and the result reported as intrastate retail revenue.

3. Alternative Allocation Method. Upon application by a reporting mobile telecommunications provider, the Commission or the Director of Finance may approve an alternative allocation method for that carrier for revenues derived from retail charges or rates that apply on an unseparated basis to both intrastate and interstate service or from rates that include both interexchange and local (including ancillary) services.

F. Administrator. The Commission shall contract with an appropriate independent fiscal agent to serve as the Administrator of the fund. Carriers shall pay contributions to the Administrator quarterly. The administrator shall establish the time and procedures for payment after consultation with the Director of Finance.

### **§ 3 RECOVERY OF CONTRIBUTIONS FROM RETAIL CUSTOMERS**

A. Collection From Retail Customers; Surcharge. Each contributing telecommunications carrier may collect its contributions from its retail customers by

applying a surcharge no higher than the percentage established by the Commission pursuant to section 2(B) to retail charges for intrastate telecommunications services billed to each retail customer.

B. Application to Intrastate Portion Only of Jurisdictionally Mixed Charges.

If an IXC has rates or charges that that apply on an unseparated basis to both intrastate and interstate service (e.g., minimum monthly bills, with or without a usage allowance and bills that combine interexchange and local services), it may apply the surcharge only to the intrastate portion of those charges using the same allocation method, applied to each customer's bill, that it uses for reporting those revenues pursuant to Section 2(C);

C. Identification of Surcharge on Bill. Any surcharge implemented pursuant to this Section shall be included on customers' bills as a separate line item and be identified as "School and Library Fund surcharge."

#### **§ 4 USE OF FUNDS**

A. Eligible Services. By May 1 of each year, the Commission will determine what services from the following list will be eligible for funding for the following July 1 to June 30 time period:

1. Telecommunications services
2. Internet access
3. Internal connection
4. Computers
5. Training

B. Minimum Services Available. At a minimum, discounts will be available for Internet access, including Internet service and connections to the Internet, to ensure at least the same level of access available to each school and library under the Maine School and Library Network as existed on June 30, 2001.

C. Innovative and Technologically Advanced Projects. The Commission will establish a process for accepting proposals from qualified schools and qualified libraries for innovative and technologically advanced projects and ensure that at least 25% of each annual program budget is allocated to such projects.

#### **§ 5 ELIGIBILITY FOR STATE DISCOUNT**



A. Eligibility Criteria. All qualified schools and qualified libraries may apply for discounts from the Fund.

B. Use of Federal E-Rate. Any qualified school or qualified library that seeks a state discount for a service that is eligible for a Federal E-Rate discount, must have applied for Federal E-Rate by submitting the federal form 470 and 471, or its equivalent should the forms change, or by participating under a Form 470 submitted by the Department of Education, State Library or other consortia.

C. Application Process. The Commission will establish a State application process. Qualified schools and qualified libraries must also submit a copy of their federal Form 470 and 471, or certify that they are part of a consortia that is filing these forms on their behalf, or explain why the school or library is ineligible for a Federal E-Rate discount.

## **§ 6 ADVISORY BOARD**

A. Membership. There shall be a Maine Telecommunications Education Access Fund Advisory Board with representatives of the following:

1. Public Utilities Commission, two members as designated by the Commission; one of which will be designated the Chairperson;
2. Public Advocate, as designated by the Public Advocate;
3. Independent telephone companies, as designated by the Telephone Association of Maine;
4. Verizon-Maine (Formerly Bell Atlantic), as designated by Verizon-Maine;
5. Qualified public libraries, as designated by the Maine State Librarian;
6. Qualified public schools, as designated by the Commissioner of Maine Department of Education;
7. Internet service providers, as designated by Internet service providers operating in Maine;
8. Maine cable television operators, as designated by the New England Cable Television Association; and
9. Wireless carriers, as designated by the wireless carriers operating in Maine;

The Commission may designate other members if it finds interests necessary to the project are not adequately represented.

B. Duties. The Advisory Board will have limited functions as assigned to it by the Commission or as provided for in this Rule. By March 15 each year, the Board shall recommend to the Commission what services should be funded for the upcoming year, the recommended level of funding for those services, and the overall amount to be assessed by Contributing Telecommunication Carriers. The Board will ensure that the needs of all interested persons are considered and represented in information presented to the Commission for any decision to be made by the Commission.

C. Procedures.

1. Meetings. The Chairperson shall schedule regular meetings of the Advisory Board. Meetings will be open to the public. The Chairperson will determine the extent of public participation at Advisory Board meetings. To the extent that proprietary or competitively sensitive information that requires trade secret protection must be brought before the Advisory Board, the Chairperson may issue such protective orders as may be necessary, pursuant to the Maine Rules of Civil Procedure as provided in 35-A M.R.S.A. § 1311-A.

2. Voting. The voting members shall be the Commission Staff members, the representative of the OPA and the representatives of the libraries and schools. For a particular decision, if the Board makes a recommendation by majority vote, those voting in the minority will have a reasonable opportunity to present their views to the Commission. If the Commission designates members to the Board in addition to those listed specifically in Section 5(A), the voting status of the member will be determined at that time.

## **§7 WAIVER OR EXEMPTION**

Upon the request of any person subject to the provisions of this Chapter or upon its own motion, the Commission may, for good cause, waive any of the requirements of this Chapter that is not required by statute. The waiver may not be inconsistent with the purposes of this Chapter or Title 35-A. The Commission, the Director of Finance, or the Presiding Officer assigned to a proceeding related to this Chapter may grant the waiver.

**BASIS STATEMENT:** The factual and policy basis for this rule is set forth in the Commission's Statement of Factual and Policy Basis and Order Adopting Rule, Commission Docket No. 2002-687, issued on March 17, 2003. Copies of this Statement and Order have been filed with this rule at the Office of the Secretary of State. Copies may also be obtained from the Administrative Director, Public Utilities Commission, 242 State Street, 18 State House Station, Augusta, Maine 04333-0018.

**AUTHORITY:** 35-A M.R.S.A. §§104, 111, 7104-B.

**EFFECTIVE DATE:** The original rule was approved as to form and legality by the Attorney General on August 21, 2000. It was filed with the Secretary of State on August 21, 2000 and became effective on August 26, 2000. The first set of amendments was approved as to form and legality by the Attorney General on March 19, 2003. It was filed with the Secretary of State on March 27, 2003 and became effective on April 1, 2003.